

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO

*D&Z AUCTION RESELLERS; GUSTAVO A.
MORENO PONCE.*

Plaintiffs

v.

MEDI DATA CORPORATION, ET ALS.

Defendants

CIVIL NO. 3:19-cv-01242 (WGY)

COPYRIGHT INFRINGEMENT;
VIOLATION OF DIGITAL
MILLENNIUM ACT; COMPUTER
FRAUD AND ABUSE

JOINDER TO CO-DEFENDANTS' MOTIONS TO DISMISS

TO THE HONORABLE COURT:

Come now co-defendants Luis Durán-Rivera and Genaro Durán-Vélez, through the undersigned attorney, and respectfully state and pray:

1. In the above-captioned case, several codefendants have filed “Motions to Dismiss”, all under FRCP Rule 12(b)(6), to wit, for failure to state a claim upon which relief can be granted. (See Dockets 75, 78, and 82).

2. Appearing co-defendants Luis Durán-Rivera and Genaro Durán-Vélez hereby join said motions to dismiss. In doing so, appearing co-defendants adopt all arguments stated in other co-defendants’ motions to dismiss, as per all federal causes of action brought against them.

3. It is worthwhile to stress that all averments and causes of actions brought forward in the Amended Complaint have been asserted against all the defendants. The allegations include requests for relief based on copyright infringement under the Copyright Act;

violations of the Digital Millennium Copyright Act (DMCA), and violations to the Computer Fraud and Abuse Act (CFAA).

4. The appearing co-defendants join, and fully incorporate herein all legal arguments against plaintiff's claims, as included in the motions to dismiss filed by co-defendants. Having filed its answer to the complaint, co-defendants now find it worthwhile to further stress that plaintiff's averments, as stated in the *Amended Complaint* against the appearing co-defendants, and pursuant to the Copyright Act, the DMCA, and the CFAA-fail to state a claim upon which relief could be granted; are not well pleaded; are time barred; and provide no facts that could plausibly give rise to any cognizable claim against the appearing parties. Therefore, the *Amended Complaint* shall be dismissed.

5. Although the appearing parties did not file a motion to dismiss under FRCP Rule 12(b) prior to filing the Answer to the Complaint, it is hereby requested that this joinder on the Motions to Dismiss, filed under FRCP Rule 12(b)(6), be considered under FRCP Rule 12(c) as a motion for judgment on the pleadings. As legal grounds for this request, the appearing parties' request rests on the fact that the applicable standard for FRCP Rule 12(b)(6) and FRCP Rule 12(c) is identical. Furthermore, a motion under FRCP 12(c) can be filed "after the pleadings are closed - but early enough not to delay trial". (FRCP 12(c)).

6. Moreover, grounds to raise a prayer under FRCP 12(h)(2) -for failure to state a claim upon which relief can be granted- are timely, supported, and allowed under a motion under Rule 12 (c), even so at the current procedural status of the above captioned case. Therefore, insofar a defendant waives the right to move for dismissal under FRCP

12(b)(6) for failure to state a claim upon which relief can be granted, said defense may still be raised and brought under a Rule 12 (c) motion. (FRCP 12(h)(2)).

7. Furthermore, it is well settled case law that, if a defendant moves to dismiss under Rule 12(b)(6) after answering the complaint, courts will generally treat the motion as one for judgment on the pleadings. *Erlich v. Ouellette, Labonte, Roberge, and Allen, P.A.*, 637 F.3d 32, 35 (1st Cir 2011); *Marrero Gutierrez v. Molina*, 491 F.3d 1, 8 (1st Cir. 2007). It is also clear, as ruled by 1st Circuit caselaw, that a FRCP 12(b) motion filed after the answer to the complaint shall be treated as if it was brought under FRCP 12(c), and thus give way for this Court to grant a prayer for dismissal, as requested on the appearing parties' motion as a joinder. (See *Patrick v. Rivera Lopez*, 708 F.3d 15, 18 (1st Cir. 2013).

8. In conclusion, the appearing parties hereby move this Honorable Court to dismiss the Amended Complaint against them, on the grounds of all arguments brought in codefendants' Motions to Dismiss, either under FRCP Rule 12(b)(6) or FRCP Rule 12(c).

WHEREFORE, it is respectfully requested from this Honorable Court that Plaintiff's Amended Complaint be dismissed with prejudice, granting appearing codefendants costs and attorneys' fees.

I HEREBY CERTIFY that on this date I electronically filed the foregoing motion with the Clerk of this Court using the CM/ECF system which will send notification of such filing to all parties.

In San Juan, Puerto Rico this 21st day of November of 2020.

SO THAT JUSTICE IS SERVED, RESPECTFULLY SUBMITTED.

s/Ricardo Alfonso García
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